...E COURT, U. S.

DEC 24 1974

MICHAEL ROBAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-5021

STATE OF ILLINOIS,

Petitioner,

vs.

WILLIAM BAUGH,

Respondent.

ON WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT OF THE FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

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STATE OF ILLINOIS,

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ON WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT OF THE FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI

Petitioner State of Illinois respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Court of the State of Illinois, Fourth District, entered in this proceeding on May 14, 1974, reversing respondent's conviction and remanding the cause for a new trial in which petitioner is prohibited from using statements made by respondent to a private citizen.

OPINION BELOW

The opinion of the Illinois Appellate Court, Fourth District, a copy of which is set forth as Appendix A to this Petition, is reported as *People* v. *Baugh*, 19 Ill. App. 3rd 448, 311 N.E. 2d 607 (4th Dist. 1974). A copy of the notice of order of the Illinois Supreme Court, denying petitioner's Petition for Leave to Appeal, is set forth as Appendix B.

JURISDICTION

The judgment of the Illinois Appellate Court, Fourth District, which is sought to be reviewed was entered on May 14, 1974. On September 27, 1974 the Illinois Supreme Court denied petitioner's petition for Leave to Appeal in the case. The present Petition for Writ of Certiorari is being filed within ninety days of the aforementioned order.

Petitioner invokes the jurisdiction of this Court under Title 28, United States Code, section 1257 (3), since a right has been especially set up and claimed under the Constitution of the United States.

QUESTION PRESENTED

1. Whether the exclusionary rule of *Miranda v. Arizona* requires a holding that statements made by respondent during a pre-indictment identification procedure to a private citizen, in this case the Attorney for the victim of a theft, are inadmissible in evidence even though at the time of the statements the Attorney for the victim was not questioning the respondent at the request of the police, nor was the Attorney an employee or agent of the police.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIV:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. History of the Case

In a criminal complaint filed by Eva A. Tatman on November 4, 1972 the respondent was charged with theft of over $150.00 in violation of section 16-1 of the Illinois Criminal Code. (R. Vol. I, p. 2.) The record in this cause consists of three (3) numbered volumes hereinafter referred to as R. Vol. I, II and III.) On December 6, 1972 the respondent was appointed counsel. Respondent was given a preliminary hearing on December 6, 1972, and the court after hearing evidence found probable cause to believe respondent had committed the offense of theft as charged. Respondent was bound over for action by the grand jury. (R. Vol. I, p. 6-7)

In a three count indictment filed on December 18, 1972 the respondent was charged with theft, forgery, and deceptive practices in violation of section 16-1(b), 17-3(a)(1), and 17-1(a) of the Illinois Criminal Code. (R. Vol. I, p. 10) On December 19, 1972, the respondent appeared and entered a plea of not guilty to all counts and demanded a trial by jury. (R. Vol. I, p. 19) On December 29, 1972 the respondent filed a motion to suppress confession and the hearing was held on the motion on March 20, 1973. (R. Vol. I, p. 21-22; R. Vol. III, p. 2) The motion to suppress was directed at statements made by the respondent in response to questions from the Attorney for the victim of the forgery and theft. (R. Vol. III, p. 1-35) The trial court, on March 20, 1973, after hearing the evidence presented by both petitioner and respondent, denied respondent's motion to suppress the confession. (R. Vol. I, p. 32)

On March 30, 1973 a jury trial was held in the case with petitioner and respondent presenting evidence. (R. Vol. II, p. 91-92) On April 10, 1973, the second day of trial, the petitioner dismissed the deceptive practices count of the indictment. (R. Vol. I, p. 48) At trial the respondent objected to the introduction by the petitioner of the statements made by respondent and the objections were overruled. (R. Vol. II, p. 28-29) On April 11, 1973 the jury returned verdicts of guilty of both forgery and theft against the respondent. (R. Vol. II, p. 156)

On April 23, 1973 the court denied the respondent's motion for a new trial and respondent was sentenced to a term of imprisonment of two to six years. (R. Vol. II, p. 182-188; R. Vol. II, p. 203; R. Vol. I, p. 132) Respondent appealed from the judgments of conviction to the Illinois Appellate Court for the Fourth District. (R. Vol. I, p. 133) On May 14, 1974 the Illinois Appellate Court for the Fourth District reversed respondent's convictions and remanded the case for a new trial in an opinion set forth in Appendix A, *infra*, and reported as *People* v. *Baugh*, 19 Ill. App. 3d 448, 311 N.E. 2d 607 (4th Dist. 1974). The Illinois Supreme Court denied petitioner's petition for Leave to Appeal in the case on September 27, 1974. (See Appendix B, *infra*)

B. Statement of Facts

The evidence is accurately set forth in the opinion of the Illinois Appellate Court, with one exception. The opinion of the Appellate Court indicates that Mr. Shonkwiler, the victim's private Attorney, was present at the Sheriff's office immediately after the defendant was arrested. There is a conflict in the Record on this point with the testimony of Mr. Shonkwiler, indicating that he was not

present in the Sheriff's office immediately after the defendant was arrested nor did he question the defendant at that time. (R. Vol. III, p. 17) Deputy Dean Mahannah of the Piatt County Sheriff's office testified that Mr. Shonkwiler talked to the defendant a little bit at the Sheriff's office immediately after his arrest. (R. Vol. III, p. 9-10) The following summary of facts is taken from the opinion of the Illinois Appellate Court.

> "Defendant was approached by Deputy Dean Mahannah and Officer Dennis Thrasher while at a restaurant in Monticello. Defendant was informed by Deputy Mahannah that he had a warrant for defendant's arrest. Defendant was then taken to the Piatt County jail. The authorities called Robert Shonkwiler, the Attorney for Miss Tatman, the victim of an alleged theft through forgery and deceptive practices. The authorities advised Shonkwiler that the defendant had to be identified. Shonkwiler informed the authorities that he could not identify the defendant, but Miss Tatman could. He suggested that due to the nature of the weather conditions and the advanced age of Miss Tatman, who was 93 years old, that the suspect be taken to her residence so that she could effectuate identification of defendant.
>
> The defendant was then taken to Miss Tatman's home. There were six individuals present at the Tatman residence: Thrasher, Mahannah, the defendant, two men that were with the defendant when he was apprehended, and Shonkwiler. Shonkwiler stated to Miss Tatman that the Sheriff needed someone to identify "William Baugh if he was in the group." Miss Tatman immediately identified the defendant. Shonkwiler proceeded to show defendant a cancelled check for $830.00 drawn on the State Bank of Cerro Gordo. He asked defendant if this was the check that Miss Tatman had given him, and the defendant answered in the affirmative. Defendant also admitted that he

made the endorsement on the back of the check and that he had cashed it at the State Bank of Cerro Gordo. Shonkwiler then inquired if defendant could make restitution for the money that he had allegedly defrauded Miss Tatman of, and Baugh stated that he could possibly do so. Defendant was indicted for theft over $150.00, forgery and theft through deceptive practices."

People v. *Baugh*, 19 Ill. App. 3d 448, 449, 450, 311 N.E. 2d 607, 608 (4th Dist. 1974)

See also Appendix A, *infra*.

C. How the Federal Questions Arose

1. The legality of the statements made by respondent to the victim's Attorney was raised at the respondent's pretrial motion to suppress the statements. (R. Vol. I, p. 21) This issue was subsequently passed upon in the State Appellate Court in respondent's favor by the Illinois Appellate Court for the Fourth District. *People* v. *Baugh*, 19 Ill. App. 3d 448, 311 N.E. 2d 607 (4th Dist. 1974) That court based its holding on the Fifth Amendment to the United States Constitution, as interpreted by this Court's decision in *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). See *People* v. *Baugh*, 19 Ill. App. 3d at 450, 311 N.E. 2d at 609.

REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

1. The applicability of the *Miranda* v. *Arizona* exclusionary rule to statements made by a suspect to a private citizen involves a substantial federal question going to the very heart of the rationale behind the exclusionary rule and is a question which is yet to be resolved by this Court; furthermore, the Appellate Court's holding suppressing the statements misconstrues decisions by this Court.

I.

The holding of the Illinois Appellate Court in this case that the exclusionary rule of *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), applies to statements made by a suspect in police custody in response to questions propounded by a private citizen constitutes an unwarranted extension of the *Miranda* rule and ignores the rationale of the exclusionary rule. This Court has never ruled on the applicability of the *Miranda* exclusionary rule to questioning by a private citizen of a police-held suspect. However, this Court has ruled that the Federal exclusionary rule enforcing adherence to the requirements of the Fifth Amendment are a restraint upon the actions of sovereign authority and not a limit upon other than governmental agencies. *United States* v. *Antonelli*, 434 F. 2d 335 (2d Cir. 1970), citing *Burdeau* v. *McDowell*, 256 U.S. 465, 41 S. Ct. 574, 65 L. Ed. 1048 (1921)

Although this Court has not ruled on the precise issue, other courts have generally held that in the absence of compulsion or duress statements made by a suspect to a private citizen are admissible even though no *Miranda* warnings have been given. *United States* v. *Casteel*, 476

F. 2d 152 (10th Cir. 1973); *United States* v. *Antonelli*, 434 F. 2d 335 (2nd Cir. 1970) and cases cited therein; *People* v. *Hawkins*, 53 Ill. 2d 181, 290 N.E. 2d 231 (1972); *State* v. *Little*, 439 P. 2d 387 (Kan. 1968). There is one exception to this general rule. The police are forbidden to use a private citizen as their agent in order to avoid the *Miranda* rule. *State* v. *Kelly*, 439 S.W. 2d 487 (Mo. 1969). This Court has stated in a search and seizure context that the main purpose of the exclusionary rule is to deter unlawful police conduct. *United States* v. *Calandra*, ——U.S.——, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974). As this Court noted in *Michigan* v. *Tucker*, ——U.S.——, 94 S. Ct. 2357 (1974), that rationale would seem to be applicable in the Fifth Amendment context as well. Assuming, without conceding, for purposes of this argument the validity of the exclusionary rules' rationale (see dissenting opinion by Chief Justice Burger in *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 911 S. Ct. 1899 (1971)), the prohibition against the police use of a private citizen to avoid *Miranda* would seem to be justified. However, any analysis under the general rule and its exception would require the court to examine the actions of the police in order to determine whether or not the police have in fact used the private citizen as their agent in order to avoid the requirements of *Miranda*. The holding of the Illinois Appellate Court in this case totally ignores the rationale of the *Miranda* exclusionary rule and indeed extends *Miranda* to cover any situation where the police are present and questioning by a private citizen takes place.

The Illinois Appellate Court recognized the exception to the general rule that statements made by a suspect to a private citizen are admissible without the necessity of

the *Miranda* warnings when it stated: "In *People* v. *Hawkins,* 53 Ill. 2d 181, 290 N.E. 2d 231, the court noted that statements which were elicited through the auspices of a private party who in effect was a police instrumentality must be suppressed if the *Miranda* warning was not administered." *People* v. *Baugh,* 19 Ill. App. 3rd 448, 311 N.E. 2d 607 at 609 (4th Dist. 1974). The Illinois Appellate Court then proceeded to focus attention on the actions of Shonkwiler (the private citizen who questioned respondent) and his interest in the case, and did not once point to any police conduct which would indicate Shonkwiler was being used as an agent by the police in order to avoid *Miranda.*

> "Shonkwiler functioned as a conduit for information elicited from defendant and used by the authorities in the prosecution of defendant. From the outset, Shonkwiler's interest was so integrated and closely aligned with the authorities that his role in this case was adversary in nature and his conduct and questions directed at defendant were accusatory in character. While there may not have been an official affiliation existing between Shonkwiler and the authorities, nevertheless, through their joint actions, an affiliation in fact arose. This is borne out by the record which reveals that Shonkwiler was present at the sheriff's office immediately after defendant's arrest prior to the time he was taken to the scene of the alleged crime; and he was present at the victim's residence where he conducted a line-up; and that it was Shonkwiler who interrogated the defendant in the presence of the complaining witness and the authorities, confronting him with incriminating evidence in an attempt to elicit damaging admissions from him. *People* v. *Baugh,* 19 Ill. App. 3rd 448, 311 N.E. 2d 607 at 609."

The Illinois Appellate Court's view of the case totally ignores the activities of the police, the very thing sought

to be controlled by *Miranda*. The Illinois Appellate Court's characterization of the private citizen as a conduit can be made in any case where the State seeks to use statement obtained by a private citizen from the defendant. The Illinois Appellate Court conceded that there was no official affiliation between the citizen and the police, but found an affiliation in fact arose. The Illinois Appellate Court found significant the fact that Shonkwiler was present at the sheriff's office immediately after the defendant's arrest. There is a conflict in the testimony, but Mr. Shonkwiler stated he did not go into the sheriff's office, nor did he question the defendant, but merely went to the courthouse in order to get a ride to Miss Tatman's home (the victim). (R. Vol. 117) In any event, the mere presence of the private citizen at the sheriff's office surely cannot give rise to an inference that the authorities were using him as their agent. The Illinois Appellate Court also found it significant that Shonkwiler was present at the victim's residence where, as the Appellate Court put it, he conducted a line-up. There is no evidence that Shonkwiler conducted the line-up, only that he asked the victim if she recognized the man who had defrauded her. It is true that Shonkwiler told the police he could not identify the respondent and that they should take the respondent to Miss Tatman's home for identification. However, there is no evidence that Shonkwiler participated in arranging the procedures used in the line-up. Again the Appellate Court has focused on Shonkwiler's actions, and not those of the police. If anything, the record demonstrates that Shonkwiler told the police what to do rather than the police directing Shonkwiler's actions. Finally, the Illinois Appellate Court noted that it was Shonkwiler who questioned the respondent. This statement begs the question. If the

private citizen does not ask the question, there would be no need to decide whether or not the private citizen was used as an agent of the police.

The Illinois Appellate Court's holding misconstrues the decisions of this Court. This Court has held that the Fifth Amendment is to be given a broad scope where there has been a "genuine compulsion of testimony." *Michigan* v. *Tucker,* ——U.S.—— at——, 94 S. Ct. 2357 at 2362 (1974). Here, as in *Michigan* v. *Tucker,* the respondent makes no claim of actual involuntariness. Indeed, the record reflects that Shonkwiler's questions were spontaneous and defendant's answers were equally spontaneous and voluntarily given. (R. Vol. III, p. 14) The importance of the voluntariness of defendant's statements is two-fold. First, this Court in *Michigan* v. *Tucker* noted that where there is an involuntary confession a second justification for the exclusionary rule has been asserted: "protection of the courts from reliance on untrustworthy evidence." *Michigan* v. *Tucker.* ——U.S.—— at——, 94 S. Ct. 2357 at 2366 (1974). Of course, that rationale is inapplicable where, as here, there is no claim that the statements were involuntary. Therefore, there can be no serious contention that the evidence of respondent's statements constituted untrustworthy evidence. The Illinois Appellate Court's holding has the effect of keeping from the trier of fact trustworthy and highly relevant evidence.

Second, this Court specifically held in *Miranda* that "there is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the

Fifth Amendment and their admissibility is not affected by our holding today." *Miranda* v. *Arizona*, 384 U.S. 436 at 478, 86 S. Ct. 1602 at 1630 (1966). This language has been consistently followed in other jurisdictions. In *State* v. *Little*, 439 P. 2d 387 (Kan. 1968), a case factually similar to the case at bar, the defendant was charged with forgery of a check at a gift shop. After being apprehended by a law enforcement officer, the defendant was returned to the shop to be identified by the victim, a Mrs. Cooper. Mrs. Cooper asked the defendant whether he was the man who cashed the check, and the defendant replied that he was. The Kansas Supreme Court conceded that defendant was in custody or at least deprived of his freedom in a significant way, but held that Mrs. Cooper's question was spontaneous and defendant's reply was equally spontaneous and voluntary. The court noted that the aim of *Miranda* was against the potentiality for compulsion found in custodial interrogation initiated by police officers, and this was not a problem in a situation where volunteered statements had been obtained without any process of interrogation on the part of the officers. In the case at bar, as in *Little*, Mr. Shonkwiler's questions were his own, and were not the result of police prompting. Respondent's answers were also spontaneous and voluntarily given; in fact, the Illinois Appellate Court did not hold that there was any police prompting of either question or answer. The Appellate Court merely found that since Shonkwiler was present with the police at the line-up and questioned the defendant that *Miranda* warnings should have been given. In so doing, the Illinois Appellate Court excludes from use by the prosecution, volunteered statements made by the respondent. This clearly violates the holding of this Court in *Miranda* v. *Arizona* and represents a dangerous and unwarranted extension of the exclusionary rule. The

effect of the Illinois Appellate Court's ruling is to institute a *per se* exclusion of any statements made by a suspect while the police are present unless the *Miranda* warnings have been given. It offends many that "the criminal is to go free because the Constable has blundered." *People* v. *Defore,* 242 New York 13, 21, 150 N.E. 585, 587 (1926). It would offend all that the criminal go free because the Constable was present.

CONCLUSION

Neither the Fifth Amendment nor this Court's decision in *Miranda* requires that a voluntary statement made by a person in police custody to a private citizen be excluded from consideration by the trier of fact. The relevant inquiry should be whether or not the private citizen was used as an agent by the police to avoid the requirements of *Miranda*. In view of the unwarranted extension of the *Miranda* exclusionary rule in this case by the Illinois Appellate Court and the clear conflict between the decision of the Illinois Appellate Court and the decisions of this Court, as well as the fact that this Court has never ruled on the applicability of *Miranda* to questioning by a private citizen, Petitioner submits that a Writ of Certiorari should issue to review the decision of the Illinois Appellate Court of the Fourth District.

Respectfully submitted,

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APPENDIX A

STATE OF ILLINOIS
APPELLATE COURT — FOURTH DISTRICT

General No. 12309

THE PEOPLE OF
THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

WILLIAM BAUGH,

Defendant-Appellant.

Agenda 74-17
Appeal from
Circuit Court
Piatt County

Mr. JUSTICE CRAVEN delivered the opinion of the court:

Defendant was indicted for theft, forgery and deceptive practices. He was found guilty by a jury of theft over $150 and forgery. The trial judge entered a judgment of conviction on both verdicts and after a sentencing hearing, sentenced defendant to an indeterminate term of two to six years for the crime of theft and forgery. Defendant appeals.

Defendant raises several issues in this appeal. We need consider only one. Defendant contends that the trial court erred in refusing to suppress certain inculpatory statements he made to the attorney for the victim of a theft, prior to receiving the admonishments required by *Miranda*

v. *Arizona,* 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694; and that as a consequence, the conviction should be reversed and the cause remanded for a new trial. We agree.

Defendant was approached by deputy Dean Mahannah and Officer Dennis Thrasher while at a restaurant in Monticello. Defendant was informed by deputy Mahannah that he had a warrant for defendant's arrest. Defendant was then taken to the Piatt County jail. The authorities called Robert Shonkwiler, the attorney for Miss Tatman, the victim of an alleged theft through forgery and deceptive practices. The authorities advised Shonkwiler that the defendant had to be identified. Shonkwiler informed the authorities that he could not identify the defendant, but that Miss Tatman could. He suggested that due to the nature of the weather conditions and the advanced age of Miss Tatman, who was 93 years old, that the suspect be taken to her residence so that she could effectuate identification of defendant.

The defendant was then taken to Miss Tatman's home. There were six individuals present at the Tatman residence: Thrasher, Mahannah, the defendant, two men that were with the defendant when he was apprehended, and Shonkwiler. Shonkwiler stated to Miss Tatman that the sheriff needed someone to identify "William Baugh if he was in the group." Miss Tatman immediately identified the defendant. Shonkwiler then proceeded to show defendant a canceled check for $830 drawn on the State Bank of Cerro Gordo. He asked defendant if this was the check that Miss Tatman had given him, and the defendant answered in the affirmative. Defendant also admitted that he made the endorsement on the back of the check and that he had cashed it at the State Bank of Cerro Gordo.

Shonkwiler then inquired if defendant could make restitution for the money that he had allegedly defrauded Miss Tatman of, and Baugh stated that he could possibly do so. Defendant was indicted for theft over $150, forgery and theft through deceptive practices.

Defendant filed a motion to suppress confession. The thrust of the motion was that defendant was not informed of his right as enumerated in *Miranda* prior to the custodial interrogation of defendant by attorney Shonkwiler. A hearing was held on the motion, and at the conclusion of said hearing the trial court ruled that the motion to suppress should be denied.

At trial, defendant renewed his objection concerning the inculpatory statement in question and the testimony relating thereto. The trial court again overruled defendant's objection. Defendant was found guilty of forgery and theft. The trial judge erroneously entered judgment on both verdicts and sentenced defendant to an indeterminate term of two to six years.

The gravamen of this issue is whether the statements in question were the product of "custodial interrogation." We find that they were.

In *Miranda*, custodial interrogation is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (384 U.S. 436, 444.) First of all, it is clear that defendant was in custody within the meaning of *Miranda*. Secondly, we are of the opinion that Shonkwiler's questions amounted to an interrogation initiated by law enforcement officers because he acted as a police instrumentality. We are aware of the general rule that in absence of compulsion or duress state-

ments made by defendant to a private citizen are admissible in evidence without the necessity of first giving the *Miranda* warning to a defendant. The State contends that Shonkwiler was not a law enforcement agent, but rather a private citizen who happened to be the attorney representing the complaining witness. In *People* v. *Hawkins*, 53 Ill. 2d 181, 290 N.E. 2d 231, the court noted that statements which were elicited through the auspices of a private party who in effect was a police instrumentality, must be suppressed if the *Miranda* warning was not administered.

Shonkwiler functioned as a conduit for information elicited from defendant and used by the authorities in the prosecution of defendant. From the outset, Shonkwiler's interests were so integrated and closely aligned with the authorities that his role in this case was adversary in nature and his conduct and questions directed at defendant were accusatory in character. While there may not have been an official affiliation existing between Shonkwiler and the authorities, nevertheless, through their joint actions, an affiliation in fact arose. This is borne out by the record, which reveals that Shonkwiler was present at the sheriff's office immediately after defendant's arrest prior to the time he was taken to the scene of the alleged crime; and he was present at the victim's residence where he conducted a lineup; and that it was Shonkwiler who interrogated the defendant in the presence of the complaining witness and the authorities, confronting him with incriminating evidence in an attempt to elicit damaging admissions from him.

We find that the trial court's ruling on the motion to suppress was contrary to the manifest weight of evidence and should be reversed. (*People* v. *Hawkins.*) For the reasons herein stated, defendant's judgment of conviction is reversed and this cause is remanded for further proceedings not inconsistent with the views herein expressed.

JUDGMENT REVERSED AND REMANDED WITH DIRECTIONS.

TRAPP, P. J., and SIMKINS, J., concur.

APPENDIX B

No. 46775

[SEAL]
STATE OF ILLINOIS

Office of

CLERK OF THE SUPREME COURT
SPRINGFIELD

62706

Justin Taft, Clerk

September 27, 1974

Hon. Lawrence Eaton
State's Attorney
Piatt County Courthouse
Monticello, Illinois 61856

No. 46775 — People State of Illinois, petitioner,
vs. William Baugh, respondent.
Leave to appeal, Appellate Court,
Fourth District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,
/s/ JUSTIN TAFT
Clerk of the Supreme Court